STATE OF MINNESOTA DISTRICT COURT

COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

- -

The State of Minnesota,
by Hubert H. Humphrey, III,
its attorney general,
and
Blue Cross and Blue Shield
of Minnesota,

Plaintiffs,

vs. File No. C1-94-8565

Philip Morris Incorporated, R.J.
Reynolds Tobacco Company, Brown &
Williamson Tobacco Corporation,
B.A.T. Industries P.L.C., Lorillard
Tobacco Company, The American
Tobacco Company, Liggett Group, Inc.,
The Council for Tobacco Research-U.S.A.,
Inc., and The Tobacco Institute, Inc.,

Defendants.

- -

DEPOSITION OF R.J. REYNOLDS TOBACCO COMPANY

(DESIGNEE WILLIAM S. SIMMONS)

Volume II, Pages 90 - 206

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(The following is the continued deposition of R.J. REYNOLDS TOBACCO COMPANY (DESIGNEE WILLIAM S. SIMMONS), taken pursuant to Notice of Taking Deposition by Rule 30.02(f), by videotape, at the offices of Womble Carlyle Sandridge & Rice, Attorneys at Law, 3300 One First Union Center, 301 South College Street, Charlotte, North Carolina, on August 21, 1997, commencing at approximately 11:10 o'clock a.m.)

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I N D E X

EXHIBITS		DESCRIPTION	PAGE MARKED
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	1107	December 29, 1988 letter, Spach to Olson, Bates 51361 1739	175
	1108	Advertisement, Bates 50071 3769	180
	1109	Advertisement, Bates 50071 3420	180
	1110	April 2, 1987 Interoffice Memorandum, Norman and Reynolds to list, Bates 50551 9347-50	182
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P R O C E E D I N G S.

(Witness sworn.)

WILLIAM S. SIMMONS

called as a witness, being first duly sworn, was examined and testified as follows:

ADVERSE EXAMINATION

BY MR. O'FALLON:

Q. Could you please state your name for the record.

A. William Samuel Simmons.

Q. And who is your current employer?

A. The R.J. Reynolds Tobacco Company.

Q. Dr. Simmons, you understand that you are here today as a representative of the R.J. Reynolds Tobacco Company to speak on that company's behalf; correct?

A. I assume that's the case, yes, sir.

Q. You have been designated by R.J. Reynolds Tobacco to speak concerning the matters of health effects of smoking and public statements relating to the health effects of smoking; correct?

A. Yes, sir, that's correct.

Q. And you are prepared to so testify; correct?

A. Yes, sir, I am.

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Q. Let's turn first to the issue of public statements related to the health effects of smoking. In general, you would agree that a company has a duty when it makes a public statement to be truthful in making that public statement; correct?

A. I believe that the company has a duty to protect its integrity and to make factual statements, yes.

Q. And to be truthful in making those statements; correct?

A. Yes, sir.

Q. You would agree that a company should not be making misleading statements; correct?

A. Not intentionally.

Q. Well you would agree that a company shouldn't make misleading statements when its own internal documents or internal knowledge would indicate that in fact what it's stating is not entirely correct?

MS. McDOLE: Objection to the form of the question.

A. I'm sorry, I don't exactly under -- understand the question, but a -- but a company should not intentionally attempt to mislead. They can -- I mean, it's very difficult to know how everybody in a population is going to interpret a statement, so some people might find a -- a statement, a given

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statement, to be misleading; some people may not.
I'm not trying to be argumentative about it, but it's a very broad question and statement, and I'm simply saying that -- that -- that a company should not set out to make deliberately misleading statements.

Q. Nor should a company withhold important information it has on a -- an important subject; correct?

MS. McDOLE: Objection to the form of the question.

A. That's -- that's a very broad statement. If you have -- you might withhold information that -- that has patent implications until it has been patented. This is not an unusual thing.

Q. Well you would agree that if you had information concerning the dangers of your own product, that you wouldn't withhold that information; correct?

MS. McDOLE: Objection to the form of that question.

A. I agree. I don't -- I think you should -- you know, you have an obligation to give true information, yes.

Q. And you have that duty and obligation to give that important information concerning the danger of a

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product, your products, regardless of what anybody else in the industry does; correct?

MS. McDOLE: Objection to the form of that question.

A. Yeah, I think right. Yeah, you -- you have an obligation to inform if you have good information.

Q. Right. For instance, if you thought or if your company knew that there was a carcinogenic substance in tobacco smoke, you would tell the public about that carcinogenic substance regardless of whether Philip Morris was willing to tell them or The Tobacco Institute was willing to tell them or B&W was willing to tell them; correct?

A. The -- if there was accurate information, certainly. I mean, it has to be accurate, believed, and -- and at that point then you have an obligation, I think, to -- to inform.

Q. And you would so inform the public; correct? You not only have that obligation, but R.J. Reynolds would in fact inform the public of that information?

A. My -- all of the information I have indicates that that is the case. Over the years they have -- R.J. Reynolds has published a tremendous amount of analytical information on both tobacco and tobacco smoke and has put those publications in the peer

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review literature or in the patent literature.

Q. Do you also agree that R.J. Reynolds has an obligation to its customers; that is, those individuals who smoke cigarettes, to make that information publicly available to them?

MS. McDOLE: Could we just clarify what "that information" means.

MR. O'FALLON: Information concerning dangers of, for instance, cigarettes or any of your products.

A. You mean the -- I presume you're referring to health risks that have been found to be associated with the use of cigarettes. Is that -- is that what you're --

Q. That could be one item.

A. In the case that I just mentioned, that's -- certainly I feel like that's an obligation.

Q. And you understand that by and large the general public, the consuming public, doesn't read patent publications; correct?

A. I don't know who all reads patent publications. It's -- I guess the person who buys National Enquirer probably doesn't read patent literature, but I don't know other than that how many people do read patent literature.

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Q. And yet a great number of your customers are people who would buy National Enquirer; correct?
A. I don't know.
Q. In fact, you also understand that most people; that is, most of us not in the specific scientific areas, also don't read the scientific journals; correct?
MS. McDOLE: Objection to the form of the question.
A. I -- I don't -- I don't know what percentage reads scientific journals and which don't. You'd be surprised. I've -- I've been surprised over the years at who reads different levels of scientific journals.
Q. What's the general publication of most of the scientific journals that are used; for instance, even JAMA, the Journal of the American Medical Association?
MS. McDOLE: I'm sorry, I don't understand the question. Objection to the form.
Q. Do you know generally what the circulation of that magazine is?
A. JAMA hits most of -- most physicians will -- will take that, and any number of good public libraries will have -- will have JAMA on the -- on

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the shelf, so its circulation to -- to libraries is pretty -- pretty extensive. That is, when I say "libraries," public libraries that the public would have access to.

Q. But even JAMA -- and -- and that's really one of the best-known scientific publication -- really has a relatively limited circulation as compared to Time magazine; correct?

MS. McDOLE: Objection to the form.

A. Okay. In terms of the number of journals printed, it would be very small compared to Time magazine, I agree, and you won't find it on a -- a shelf, a lot of newsstand shelves, okay, for -- for sale. But as I pointed out, it does show up in a lot of public libraries, which means that there are a lot of people that have access to JAMA that -- that you might not suspect have access to it.

Q. Now when a company such as R.J. Reynolds makes a public statement, the company hopes that the public will hear that statement; correct?

MS. McDOLE: Objection to the form.

A. Public statements, I don't make a lot of public statements and I don't -- so I'm not sure what your -- what the question is. They may make a public statement maybe for different reasons. They may be

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talking to a specific audience. I don't -- I don't know.

Q. In any event, when R.J. Reynolds makes a press release or takes out an advertisement, they hope that they will be heard with what they have to say; correct?

MS. McDOLE: Objection to the form.

A. I'm sure, in my own mind, that they want a certain readership of it. I'm not -- I mean, it's an awfully broad -- broad statement.

Q. In fact, R.J. Reynolds hopes that that readership, whoever they're hoping their public statement reaches, will in fact rely on what RJR has to say; correct?

MS. McDOLE: Objection to the form.

A. That may not be the case. They may want to just stimulate or provoke thought perhaps.

Q. At the very least, they want the public to hear their side of the story; correct?

MS. McDOLE: Objection to the form.

A. I don't -- I -- I've never thought about it in that terms, but I -- I do believe that what they'd like to have is just a thought-provoking statement, have people at least stop and think about an issue.

Q. And consider R.J. Reynolds' side of that issue;

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correct?
A. Consider all sides of the issue.
Q. Including R.J. Reynolds' side; correct?
A. Including R.J. Reynolds' side.
Q. And in part then R.J. Reynolds will go forward and tell the public R.J. Reynolds' side of the issue; correct?
A. I think that that is an accepted way of communicating in -- in the United States, that we have First Amendment rights and we -- we try to -- and have a right and an obligation to -- to state our position.
Q. And when you state your position, you expect that the people who hear your position will rely on what you have to say; correct?
MS. McDOLE: Objection to the form.
A. I don't think so. I think that the idea is to get people to stop and think about the issue. Whether they rely on our side or not, we'd like for them to see all sides, all facets of an argument, and think about all facets of a -- of an issue.
Q. And certainly consider your stand on that issue; correct?
A. And consider ours along with others, yes, sir.
Q. And that's what you usually do? You usually

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present both sides when you make these public statements?

A. When we make a public statement, it is generally in response to something else.

Q. And what you're trying to do is get out RJR's spin on that particular issue; correct?

MS. McDOLE: Objection to the form.

A. What we're trying to do is to state facts that may not have been stated in previous statements.

Q. And again when you state those facts, you expect the public to consider and rely on those facts in deciding and considering the issue involved; correct?

MS. McDOLE: Objection, compound. Objection, asked and answered.

A. We expect or hope for people to deliberate, to think for themselves. This is -- this is the concept. This is the idea.

Q. When you make public statements concerning the dangers associated with tobacco and cigarette smoking, you hope the public will hear those statements, don't you, sir?

A. We hope that they will -- will read them or -- or -- or hear them, yes.

Q. And hopefully if they read them and hear them,

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you hope that they will rely on and consider what you have to say; correct?

A. We --

MS. McDOLE: Objection, compound.

A. What we hope for is that they will take our statements into consideration when they deliberate an issue. There's more -- always more than one side to any issue. Sometimes there are four, five facets to a given issue, and we would like for the public -- an informed public is a public that has deliberated over the various facets of an issue, not just one side or two sides, but various aspects of an issue.

Q. But you would also agree that you can't misinform the public, can you, sir?

A. My belief is that we should not or -- we, no responsible organization, should deliberately attempt to misinform or mislead or tactics of that nature when making public statements, that's true.

Q. Okay. And you would agree that a company cannot sell a legal product illegally; correct?

A. That's a very strange question. I have a -- a legal product. If it's a legal product, that there are ways that I -- that are prescribed for marketing and selling products. I'm not sure what you're -- what you're getting at. I mean, I don't know how

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we -- we sell to wholesale or how wholesale sells to retail. This is an aspect of the business that I'm not familiar with.

Q. Well let me just try to clarify. You would agree that even though you have a legal product, you cannot sell that product by making untrue statements to the public about that product; correct?

A. That's an awfully general statement. I don't -- and once again, I'm not in marketing or -- or sales, so I'm not sure what you're talking about, but I -- you don't make false claims for a product.

Q. Nor should you be making any untrue statements about your products to the public; correct?

MS. McDOLE: Objection, same question.

A. Not knowingly.

Q. Nor should you be making misleading statements to the public about your product; correct?

A. Not deliberately establish a paradigm where you mislead the public. As I said once before, four, five people -- if you have ten people reading a statement, you're going to have different interpretations of that statement, and so people can be misled unintentionally.

Q. Nor should you withhold important information about your product in an effort to continue sales of

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your product; correct?

MS. McDOLE: Objection.

A. I'm sorry, would you --

Q. Sure. Nor can you withhold important information about your product in an effort to continue the sales of those products; correct?

A. That is a very unusual question. I'm not sure I even know how to address that question.

If you have important information that bears on -- I don't know. You're in an area of marketing and sales that I don't know how to -- how to address now, Mr. O'Fallon.

Q. Well I'm also in an area of public -- of public statements concerning health.

MS. McDOLE: Well I -- I disagree with that.

Q. So let's go to that area.

A. But the question didn't -- didn't include a health item.

Q. Well you agree that R.J. Reynolds when it makes statements about health also has an eye towards what effect that will have on the market; correct?

MS. McDOLE: Objection to the form.

A. I don't -- I don't think so. I mean, that's not my --

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Q. So you don't think that --

MS. McDOLE: Well let him finish. Go ahead.

A. That's not my understanding. I'm not familiar with every statement that's ever been made by R.J. Reynolds or any other tobacco company regarding health, but the -- the statements that I'm aware of are not -- are not made with an idea towards sales at all.

Q. But you certainly consider, you, R.J. Reynolds Tobacco Company, certainly consider the sales impact your statements about health will have; correct?

MS. McDOLE: Objection to the form.

A. I've never given any consideration to that.

Q. You've made public statements about health on behalf of R.J. Reynolds previously, haven't you, sir?

A. I have certainly been in a public forum on R.J. Reynolds' behalf, but I'm not sure what -- what you're referring to. I've talked about the science issues.

Q. You've spoken and you've given newspaper interviews and you've given television interviews; correct?

A. That is correct.

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Q. Did anybody from the marketing department or the public relations department talk to you before making those statements, sir?
A. Not from the marketing department. I have talked on occasion with people from the public relations department.
Q. And their job is to make sure that the company is seen in the best public light; correct?
MS. McDOLE: Objection to the form.
A. I wouldn't -- I wouldn't characterize that. I think that their job is to see to it that the -- the company has a fair presentation to the public.
Q. Once again, with an eye towards getting R.J. Reynolds' side of the story out, whatever that may be; correct?
MS. McDOLE: Objection to the form.
A. With an idea toward getting factual information out, whatever that may be, as far as I can tell, Mr. O'Fallon.
Q. And again that should be complete factual information, not simply the factual information that helps R.J. Reynolds in that particular situation; correct?
MS. McDOLE: Objection to the form.
A. They have an obligation or -- or -- or my -- I'm

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just trying to go back with my experience, is to make as accurate a statement as they can under the circumstances considering all of the -- all facets of an issue.

Q. Doctor, in 1954 the tobacco companies, including R.J. Reynolds Tobacco Company, issued a public statement wherein each company accepted an interest in people's health as a basic responsibility, paramount to every other consideration in your business; correct?

MS. McDOLE: Objection. It's a loaded question.

A. I don't know. I haven't seen that -- that particular statement. You may be right, Mr. O'Fallon. I just haven't seen that particular statement.

Q. You're not aware of the Frank Statement?

A. I've heard of it, Mr. O'Fallon, and I may have looked at it, but I have -- it's been a -- a while since I have.

Q. Let me show you a document that's been previously marked in this litigation as Sistad Exhibit Number 2. This is entitled "A Frank Statement to Cigarette Smokers."

Does this refresh your recollection at all?

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A. I believe I have seen this, yes, sir. It's long before my time with Reynolds, but I believe I've seen this.
Q. And this statement was sponsored by numerous tobacco manufacturers, including R.J. Reynolds Tobacco Company; correct?
A. I see R.J. Reynolds' name on here, yes, sir.
Q. Right. And that's listed under "Sponsors"; correct?
A. That's correct, yes, sir.
Q. And it lists E. A. Durr, who was the president at that time of R.J. Reynolds Tobacco Company; correct?
A. It says "E. A. Durr, President," yes, that's correct.
Q. And is it your understanding that he was in fact the president of R.J. Reynolds Tobacco Company at that time?
A. I don't know.
Q. This is a public statement on health, isn't it?
A. It's a public statement. I don't know whether it's on health or not.
Q. Okay. Why don't you look at the second column. Do you see where number four is?
A. Yes, sir.

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Q. Look at the paragraph under number four. Here's what it states: Quote, "We accept an interest in people's health as a basic responsibility, paramount to every other consideration in our business," end quote. That's what it says; correct?
A. That's correct.
Q. So in 1954 R.J. Reynolds made a public pledge that it would accept a basic responsibility in people's health; correct?
MS. McDOLE: Objection to --
A. I don't --
MS. McDOLE: -- the word "pledge."
A. I don't know what -- what is meant by this -- this statement. The statement says that they have a basic responsibility -- an interest and a basic responsibility to their customers, is what I -- I read here. I'm not sure what the implications are or what was meant by the people who -- who wrote that.
Q. Do you think you need to know what somebody had in their mind in order to interpret a public statement that was published in numerous magazines -- or numerous newspapers throughout this country, including in the state of Minnesota?
A. I want to. I would like to understand it. I'd -- I'd like to have heard it. I don't know how

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it was interpreted in -- in the times in which it was published, in 1954, what -- what did it mean in 1954. I don't know what -- what these people were -- were addressing when they said that. I -- you know, I could put an interpretation on it that they are -- they feel a responsibility to make, for example, the best possible product.

Q. Well why don't you read the very first paragraph. That will give you some background. It says, quote, "RECENT REPORTS on experiments with mice have given wide publicity to a theory that cigarette smoking is in some way linked with lung cancer in human beings." There's your context.

So in the context of reports of lung cancer in human beings being linked with cigarette smoking, the tobacco companies went out and accepted as a basic responsibility an interest in people's health; isn't that true?

MS. McDOLE: Let me reread it a second, just a minute.

Well objection to the phrase that this says reports of lung cancer in human beings are linked with cigarette smoking. That's not what this says. It talks about a theory.

MR. O'FALLON: The jury can certainly read

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it and judge it for themselves.

A. I don't know what reports that they're referring to here, Mr. O'Fallon. I haven't -- haven't seen those reports, and this may be true. It may -- you know, I -- I was not following this issue at the time. I was a senior in high school, I think, as a matter of fact.

But I don't -- I've read the statement. I see the statement. I understand your question. I don't know what they were referring to when they made this statement. My interpretation is that they feel a basic responsibility to turn out the best product they can.

Q. Okay. They also state, quote, "We believe the products we make are not injurious to health"; correct?

A. I see the statement, yes, sir, that's correct.

Q. And that's a point-blank statement, isn't it, sir? It doesn't really require a whole lot of interpretation.

A. It's a very -- it's a very simple statement and certainly it's a point blank, I guess.

Q. Now you would agree that if R.J. Reynolds had in its files at that time information that indicated that in fact cigarettes may be injurious to health,

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that they shouldn't have made that statement; correct?

A. If they -- if they believed -- well, what this -- the correct statement here is if they believed that cigarettes were injurious to people's health, then it would have been incorrect to put a statement down that says, "We believe that they're not injurious to health."

Q. That would have been misleading; correct?

A. That is a -- very likely a misleading statement, yes.

Q. Okay. In fact, if at the time that R.J. Reynolds signed off on the Frank Statement it had in its files evidence which indicated and tended to confirm the relationship between heavy and prolonged tobacco smoking and incidence of cancer of the lung, it would certainly be misleading to make that statement; correct?

MS. McDOLE: Objection to the form of that question, to speculation.

A. If they had overwhelming evidence or -- or at least substantial evidence to the contrary that they believed, then they shouldn't have made this statement.

Q. And do you know whether they had such

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information in 1954?
A.   I don't know what they had in 1954.
Q.   Let me show you a document that's been previously marked as Plaintiffs' Exhibit 1090. This is a document entitled "SURVEY OF CANCER RESEARCH with emphasis upon POSSIBLE CARCINOGENS FROM TOBACCO" by Claude E. Teague, Junior, dated February 2nd of 1953; correct?
A.   Yes, sir.
Q.   Have you seen this document previously?
A.   I believe I've seen it, but I haven't had time to -- to actually read it or study it, Mr. O'Fallon.
Q.   Let's look on the table of contents. It indicates here that one of the topics of this memo is tobacco and carcinogenic activity, and it includes statistical studies, animal studies with tobacco substances, carcinogens identified in tobacco substances, compounds isolated from tobacco substances and the possibility of carcinogens arising from them, and tobacco additives; correct?
A.   That's correct, yes, sir.
Q.   Okay. Let's look on page two under the object of the study. "The object of this report is to give a broad, general survey of cancer research, with emphasis on studies actually or potentially related

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to carcinogens from tobacco"; correct?
A. That is correct, yes, sir.
Q. And "carcinogen" means "cancer producing"; correct?
A. A carcinogen is -- yes, will produce cancer in one animal species or another.
Q. Let's look back on page 14, at Dr. Teague's conclusions. Under "CONCLUSIONS" it's stated, quote, "The increased incidence of cancer of the lung in man which has occurred during the last half century is probably due to new or increased contact with carcinogenic stimuli"; correct?
A. That's the first sentence, yes, sir.
Q. It states, quote, "The closely parallel increase in cigarette smoking has led to the suspicion that tobacco smoking is an important etiologic factor in the induction of primary cancer of the lung"; correct?
A. That's the second sentence, yes, sir.
Q. "Studies of clinical data tend to confirm the relationship between heavy and prolonged tobacco smoking and incidence of cancer of the lung"; correct?
A. That's the third sentence, yes, sir.
Q. Thus, R.J. Reynolds' own scientist who went out

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and conducted a survey of the literature concluded that the connection between heavy and prolonged tobacco smoking and the incidence of the -- and the incidence of cancer of the lung tend to be confirmed; correct?

A.   No, that's not what he says. He says that -- well he says to confirm the relationship. There is a -- there is a relationship between heavy consumption and the clinical incidence, yes.

Q.   When you took out your Frank Statement in 1954, did you tell the public that? Did you tell the public that studies of clinical data tend to confirm the relationship between heavy and prolonged tobacco smoking and incidence of the cancer of the lung?

A.   No, we told them that causation hadn't been proved.

Q.   No, you told them "We believe the products we make are not injurious to health," didn't you?

A.   That's what they believed.

Q.   Dr. Teague analyzed it and he believed it tended to confirm the relationship.

A.   He confirmed --

MS. McDOLE: He looked at --

A.   He confirmed a relationship, but not a causal relationship. That's not what he said.

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Q. And in 1954 what the tobacco industry did is use exactly your reasoning to create a controversy that didn't exist; correct, sir?
MS. McDOLE: Objection to the form.
A. That's not true.
Q. They only gave part of the information, didn't they, sir?
A. They gave the information that existed.
Q. They didn't give Dr. Teague's information, did they?
A. They --
MS. McDOLE: Objection to the form. The studies were a matter of public record.
Q. Dr. Teague's analysis of those studies was not a matter of public record, was it, sir?
A. Dr. Teague's analysis is not the analysis of a man who is -- his conclusions, by the way, are not that there was a causal association.
Q. Well the jury will have to decide that, sir, won't they?
MS. McDOLE: You don't have to answer that one.
Q. Dr. Teague was your scientist. He was a scientist assigned by RJR to look at this very important issue; correct?

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Source: https://www.industrydocuments.ucsf.edu/docs/lxhd0001

MS. McDOLE: Objection to the --
A. I don't know if Dr. Teague was assigned to look at the issue or not, Mr. O'Fallon. I don't -- I don't know whether -- what his assignment was. I was not here at the time.
Q. Did anybody else do a follow-up report?
A. I don't re -- I don't know.
Q. He also made certain recommendations to the company; correct?
A. I don't know. Well I see some recommendations down here.
Q. He recommended that this preliminary broad survey of cancer research be supplemented by a complete detailed survey of the -- of the individual topics discussed above. Did R.J. Reynolds do that at the time?
A. I -- I'd have to go back and look at the topics that were discussed. I don't know.
Q. Other than this document, are you aware of any other surveys or analysis of the cancer research that were in R.J. Reynolds' files in 1954 when they signed off on the Frank Statement?
A. I haven't seen those documents. They were -- they may be there and they may not. I don't know.
Q. As you sit here today, you can't testify that

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they are there, can you?
A. I'm sorry?
Q. As you sit here today, you can't testify that they exist, can you?
A. I don't know whether they exist or not, Mr. O'Fallon.
Q. By 1958 the industry had basically concluded that the causal link between cigarette smoking and lung cancer had been established; correct?
A. Not to my knowledge, Mr. O'Fallon.
Q. I'm going to ask you to look to a -- to look at a document that's been previously marked as Plaintiffs' Exhibit 304. Have you seen this document previously?
A. I have not, no, sir.
Q. This is a report on a visit to the United States and Canada produced and done by British-American Tobacco Company. You're familiar with them; correct?
A. I know who British-American Tobacco is, yes, sir.
Q. They own Brown & Williamson; correct?
A. That's my understanding, yes, sir.
Q. And also now American Tobacco; correct?
A. I believe that's the case, yes, sir.

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Q. They're one of the world's largest cigarette manufacturers; correct?
A. I believe that's the case.
Q. And they have been for a number of years; correct?
A. I don't know how long.
Q. They've been around for a long time, haven't they, sir?
A. I believe that -- I believe that's the case, Mr. O'Fallon. I don't know how long they've been in -- in existence.
Q. Let's look at page two of the document, Bates stamp number 105408492.
A. I'm sorry, page two?
Q. Correct.
A. Okay.
Q. Are you there?
A. I'm at page two. Now what did you say look for?
Q. Let's look to the top of the page under "INTRODUCTION."
A. Okay.
Q. They write, quote, "From our contacts in" U.S. "and Canada we sought information on the following :-

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"1. the extent to which it is accepted that cigarette smoke 'causes' lung cancer"; correct?
A. That's the first statement, yes, sir.
Q. And that's one of the subject matters they were apparently asking questions about; correct?
A. According to the statement, that's the case, yes, sir.
Q. Okay. And let's look on the front, on that first page, page one, not the front page, page one, and let's see who they talked to. They talked to several tobacco companies; correct? Start from the top and move down. They talked to American Tobacco Company; correct?
A. That is correct.
Q. They talked to the Medical College of Virginia; correct?
A. That is correct.
Q. That's where American Tobacco was doing some research; correct?
A. I don't know.
Q. Okay. They talked to Liggett & Myers; correct?
A. I see "Liggett & Myers," yes.
Q. Philip Morris; correct?
A. That's correct.
Q. TIRC; correct?

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A.   Yes, sir.
Q.   TIRC is the research branch that's funded by all the tobacco manufacturers, including R.J. Reynolds; correct?
A.   I'm --
          MS. McDOLE: Objection.
A.   -- aware of a CTR, but I'm not -- I'm not aware of a TIRC.
Q.   You're not aware that TIRC was the predecessor of CTR?
A.   It was -- I -- I thought it was TRC. I didn't realize it was TIRC.
Q.   Why don't you go back to the Frank Statement for a second.
A.   All right, sir.
Q.   Look at the third column, number two.
A.   Okay.
Q.   It says, quote, "For this purpose we are establishing a joint industry group consisting initially of the undersigned. This group will be known as TOBACCO INDUSTRY RESEARCH COMMITTEE"; correct?
A.   Yes, sir.
Q.   TIRC?
A.   TIRC, right.

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Q. Okay. And so TIRC appears to be the research branch of The Tobacco Institute; correct?

A. It's called the Tobacco Industry Research Committee. I don't know whether that -- I don't know what they mean by "committee." I just know that it's -- if this TIRC on here is the same that's over here, it's a committee that calls themself the Tobacco Industry Research Committee. So I don't -- I don't know what -- whether they -- that would be a research branch or what. I don't know.

Q. The representatives from British-American Tobacco apparently met with the industry group TIRC four times; correct?

A. Let me see. I see on their itinerary -- I see on the 28th of April they did, then the 5th of May, the 8th of May and the 10th of May. It looks like it. That's on the itinerary. I presume that they -- maybe they made these meetings, yes, sir.

Q. Let's look under -- back on page two under the subheading called, quote, "'CAUSATION' OF LUNG CANCER." Do you see that?

A. I see it, yes, sir.

Q. They state, quote, "With one exception," parenthetical, "(H.S.N. Greene)," end parenthetical, "the individuals whom we met believed that smoking

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causes lung cancer if by 'causation' we mean any chain of events which leads finally to lung cancer and which involves smoking as an indispensable link"; correct?

MS. McDOLE: Since we're being so precise or you are about reading these things, the -- the word "causation" is in quotes, as "causation" and "causes" and "cause" were in quotes in earlier passages that you read.

MR. O'FALLON: Move to strike your colloquy. I'll reread the statement.

Q. It states, quote, "With one exception," parenthetical, "(H.S.N. Greene)," end parenthetical, "the individuals whom we met believed that smoking causes lung cancer if by," quote, "'causation,'" end quote, "we mean any chain of events which leads finally to lung cancer and which involves smoking as an indispensable link"; correct?

A. That statement is in there, yes, sir.

Q. Let's look on the back at page eight of this document.

A. All right, sir.

Q. Under "CONCLUSIONS," number one, it states, quote, "Although there remains some doubt as to the" portion "of the total lung cancer mortality which can

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fairly be attributed to smoking, scientific opinion in U.S.A. does not now seriously doubt that the statistical correlation is real and reflects a cause and effect relationship"; correct?

MS. McDOLE: The word is "proportion," not "portion."

MR. O'FALLON: I'll read it again.

Q. Quote, "Although there remains some doubt as to the proportion of the total lung cancer mortality which can fairly be attributed to smoking, scientific opinion in U.S.A. does not now seriously doubt that the statistical correlation is real and reflects a cause and effect relationship"; correct?

A. That's the first statement, yes, sir.

Q. At this point in time, the cause-and-effect relationship is established; correct?

A. I don't think so.

Q. It's established in the mind of the scientific community; --

MS. McDOLE: Objection.

Q. -- correct?

MS. McDOLE: Objection to the form.

A. The second statement says "There remains an area for debate as to what is meant by 'causation,'" Mr. O'Fallon, so I don't know what they mean by -- by

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"causation" here. I don't know what they're talking about. This document was written an awfully long time ago.

Q. Well they defined "causation" in that first paragraph I read to you, didn't they? "With one exception ... the individuals whom we met believed that smoking causes lung cancer if by," quote, "'causation,'" quote, "we mean any chain of events which leads finally to lung cancer and which involves smoking as an indispensable link." That's pretty clear, isn't it?

A. No, it's not all that clear to tell you the truth, Mr. O'Fallon, because what it says is they believe that, in their judgment that. They didn't say that there was a -- final scientific proof had been established. It was something that they -- an impression that they had. I don't know who "they" were.

Q. Well it was all the people they talked to, including representatives of the industry and the industry's own research council, the Tobacco Industry Research Council; correct?

MS. McDOLE: Objection to the form, objection that that's the source of this.

A. They've got an itinerary down here. I don't

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know who all they did talk to. This is who they visited with. This is who they were to meet with, so I -- you know, I don't know. I don't know what was on their mind.

Q. And the people writing this document are employees of the tobacco industry; correct?

MS. McDOLE: Objection, lack of foundation that this witness knows that.

A. It looks to me like, well, they were either --

MS. McDOLE: If you know, you know, Sam.

A. I -- I don't know who these people are. Sorry.

Q. And you understand that British-American Tobacco Company, the people who employed these gentlemen, owned an American company, Brown & Williamson; correct?

A. I don't know if they owned them at that time or not. I don't know how long they've owned Brown & Williamson, Mr. O'Fallon.

Q. Well let's see what --

By the way, did R.J. Reynolds ever take out an ad or did the industry ever take out an ad that said causation's now established using the definition of "causation" that's used on page two of this document; that is, "if by 'causation' we mean any chain of events which leads finally to lung cancer

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and which involves smoking as an indispensable link"?

A. I don't know, Mr. O'Fallon.

Q. Let's see what R.J. Reynolds had to say. I'm going to hand you a document that's been previously marked as Plaintiffs' Exhibit 1049. This is a document to a Mr. Kenneth H. Hoover from Alan Rodgman dated November 2nd, 1959.

Have you ever seen this document?

A. I have -- I have not. I have not looked at this document.

Q. Dr. Rodgman reports that "In 1954 the first report of the presence of a carcinogenic," parenthetical, "(cancer-producing)," end parenthetical, "polycyclic hydrocarbon 3,4-benzpyrene in cigarette smoke was published"; correct?

A. That's the first statement, first sentence, yes, sir.

Q. He then states, quote, "Since then, approximately 60 similar compounds have been isolated from the smoke of cigarettes"; correct?

A. That's the second sentence, yes, sir.

Q. He states that "Eight of the polycyclic hydrocarbons isolated from the smoke are known to produce cancer in mice"; right?

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A. That's the next -- first sentence of the next paragraph, yes, sir.

Q. "Another five or six are suspect as cancer-producing agents in laboratory animals"; correct?

A. Yes, sir, that's the next statement.

Q. All right. He then goes on to state the following paragraph: "There is no evidence that any of these compounds will produce cancer in man. Nonetheless, there is a distinct possibility that these substances would have a carcinogenic effect on the human respiratory system. Medical experience has shown that man responds to various chemical substances in the same manner as experimental animals. It follows therefore that it would be better for the consumer if cigarette smoke were devoid" -- "devoid of such compounds"; correct?

A. That's the next statements, yes, sir.

Q. Did R.J. Reynolds ever take out a public advertisement telling the public that information?

A. I don't know whether they did or not, no, sir.

Q. They should have, shouldn't they?

A. I don't know what the state of this information was, the state of the analytical precision. I don't know how good this information was. I don't know

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whether they should have or not.
Q. It's reported by your own scientist; correct?
A. Certainly.
Q. He would eventually become the head of your research department; correct?
A. I don't know if Dr. Rodgman was ever head of the research department. He was certainly an important figure in the research department.
Q. He was a trusted scientist; correct?
A. And a very good man, yes, sir.
Q. So you had this information -- "you" meaning R.J. Reynolds Tobacco. You had information in your own files that not only confirmed earlier reports that benzopyrene was in cigarette smoke, but that other polycyclic hydrocarbons were in cigarette smoke; correct?
A. According to this document, that's correct, yes, sir.
Q. Now you didn't hesitate in 1954 to tell the public that you didn't believe your products are injurious to health. Why don't you come out and now tell them the information you have in a public statement that's going to be published throughout the country, including Minnesota?
MS. McDOLE: Objection, asked and

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answered.

A. I don't know what -- what the procedure was, but I don't see down here that anybody still believes -- if you read that first sentence in that third paragraph, "There is no evidence that any of these compounds will produce cancer in man."

Q. Well in part that's because you don't go out and do direct tests on man with carcinogenic compounds; correct, sir? That would be unethical.

A. That is correct.

Q. You do them on animals?

A. That's correct.

Q. And you extrapolate that information to man; correct?

A. If you -- if you do the experiment the correct way, that's -- that's true.

Q. Don't you think that a company that produces a consumer product that knows that its product may be producing cancer in rats should be telling people that?

A. I don't know what the public knew at that time and I don't know what we told the public and I don't know what the -- the situation was at that time. I don't know the circumstances.

Q. You have no evidence that R.J. Reynolds took out

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an advertisement like the Frank Statement to tell the public that you now had at least eight polycyclic hydrocarbons identified in cigarette smoke that produced cancer in animals; correct?

A. Mr. O'Fallon, it is my recollection that the presence of polycyclic aromatic hydrocarbons in all combustion effluent was pretty well established at that time. I don't know what the scientific literature looked like in 1959 with respect to this. I know that we ultimately published in the scientific literature our analytical findings on the composition of cigarette smoke and that those publications have been cited by the Surgeon General in some of his reports.

Q. You didn't publish everything you had, did you?

A. I don't know if we published everything. I don't know if we believed everything we had. That's -- a scientist has an obligation to actually believe his data before he publishes. You don't believe something if it -- if there's a suspicion that your data may be incorrect, if you don't have good statistical evaluation of it, if your analytical techniques are not very good. I mean, you might have a suspicion that it's there, but you -- you have an obligation not to put bad information or incorrect

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scientific information in the peer review literature.

So I -- I don't know the circumstances behind this -- this -- this document.

Q. But you also have an obligation to tell the public, who's actually smoking your products as opposed to the scientists, who are also doing research, if and when you discover that your products may be injurious to health; correct?

MS. McDOLE: Objection to the form of the question.

A. The question is -- is a -- if you have good information, you have an obligation to make it public.

Q. And you didn't hesitate to tell the public that you didn't believe your products were injurious to health in 1954, did you?

A. I beg your pardon?

Q. I said you certainly didn't hesitate to tell the public that you didn't believe your products were injurious to health in 1954, did you?

A. I don't know what the circumstances are surrounding that, but I know that the publication was -- and I don't know how widely it was disseminated, so -- but -- but it has been made,

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certainly.

Q. And certainly you should use the same eagerness to talk to the public when you find out that you've got what you know to be injurious products in your cigarette smoke, especially if you're taking a basic interest in people's health as your paramount interest of your company; correct?

MS. McDOLE: Well objection to the compound nature of the question and the assumptions within the question.

A. There are several issues involved there, but I do know that the company made a number of efforts. It was about this period of time that the research department was expanded rather dramatically, which is why Dr. Rodgman came on to begin with.

Q. Dr. Rodgman had been there since 1953.

A. That's right. This is -- this is about the time that --

Q. This is 1959.

MS. McDOLE: Could you let him finish, please.

MR. O'FALLON: Well I want him to make accurate statements.

MS. McDOLE: Well you can correct them after he's finished if you think --

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A. Doctor --

MS. McDOLE: If you think it's necessary, just wait until the witness is finished, and then make whatever follow-up questions you want to.

A. The company became really involved in expanding its research capabilities around 1950, and as you pointed out, in '53 or '54 Dr. Rodgman joined the company. I believe Dr. Rodgman came down from Canada. His expertise as an organic chemist was in polycyclic aromatic hydrocarbons, which is why he was brought on, to study that particular phenomenon, and so the company was looking at this phenomenon and -- and ways to reduce the concentration of these compounds and so forth in -- in -- in product design. Now this is something that I have learned since I've been at Reynolds.

So as Dr. Rodgman pointed out, at this particular time, there was no evidence that these compounds will produce cancer in man.

Q. Go on and read the rest of the paragraph.

A. He says "... there is a distinct possibility that these substances would have a carcinogenic effect on the human respiratory system," a distinct possibility.

Q. Did you disclose that to the public?

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A. The possibility may not have been sufficiently distinct to make that disclosure. I don't know.
Q. That's not what he says, is it, sir?
A. He says --
MS. McDOLE: Well that's -- objection to the assumption that he says anything differently than what's written here.
MR. O'FALLON: Well he's testifying that he means something differently than what he's written, so --
MS. McDOLE: I disagree. I disagree with that. You've asked him what he thought about this and he's told you.
MR. O'FALLON: My question speaks for itself.
A. The -- his conclusion --
MS. McDOLE: Do you know what you're responding to at this point? Do you know what --
THE WITNESS: Yeah.
MS. McDOLE: Okay.
A. He says "It follows therefore that it would be better for the consumer if cigarette smoke were devoid of such compounds," and which Reynolds and other organizations made an effort to reduce the presence of those compounds in cigarette smoke.

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Q. But if you told the public that these compounds probably cause cancer and that they'd be better off without the compounds in their cigarettes, it might have actually caused people to stop smoking some of the cigarettes, so you didn't tell the public that, did you?
A. I don't believe that's the case. In 1959 cigarettes were known as coughing nails and cancer sticks.
Q. What do you base that on, sir?
MS. McDOLE: Let him finish. Let him finish. Go ahead. In 1959 --
A. When I was -- when I was in school, when I was an undergraduate, this was a phrase that I heard quite often. It was -- it was virtually common knowledge that there was an association between smoking and -- and different types of cancer, so I don't know that disclosure of something like this would have -- or -- would have changed public opinion or not. I just don't know, Mr. O'Fallon.
Q. The only people actually denying the causation at that time was the cigarette industry; correct?
MS. McDOLE: Objection to the form, not correct.
A. I don't know, Mr. O'Fallon.

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Q. And the people smoking, they didn't believe it, did they?

A. It's my understanding that they did, but I don't know.

Q. You don't have any --

You don't really know what the consumers knew at that time, do you, sir, I mean, other than what the lawyers have told you to say here?

MS. McDOLE: Objection to the form.

A. The lawyers haven't told me to say anything here, Mr. O'Fallon.

Q. I'm sorry, suggested.

A. And they haven't suggested that I say anything here, Mr. O'Fallon. I'm giving you the best that I have from my own experience.

Now my recollection in 1959, I had graduated. I was -- had gone through undergraduate. I was working for the Thiokol Chemical Corporation. I was a smoker. I -- I can recall that cigarettes were referred to as coughing nails and cancer sticks in those days. There was a lot of publicity and -- and publications about -- either newspapers or Reader's Digest about the hazards, the health hazards, the risks, associated with using cigarettes.

This was widespread even in those days, so

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that's my knowledge of the situation. I was not an employee of the tobacco industry.
Q. But R.J. Reynolds wasn't among the people dispensing that information, were they, sir?
A. I don't know, sir.
Q. R.J. Reynolds didn't take out an ad saying, "Yes, we believe cigarettes are injurious to health," did they, sir?
A. I -- I don't know that they did, no, sir.
Q. Let's look at Deposition Exhibit 1050. This is a document authored by Alan Rodgman dated in 1962. Have you seen this document previously?
A. I don't recall seeing this document, no, sir.
Q. This is called "THE SMOKING AND HEALTH PROBLEM -- A CRITICAL AND OBJECTIVE APPRAISAL"; correct?
A. That's at the top of the page, yes, sir.
Q. Let's look at the first paragraph of the memorandum. He states, quote, "Although the major part of the sales of this Company consists of cigarettes" --
A. Wait a minute. Are we -- which paragraph did you say?
Q. Memorandum, first page.
A. Oh, I -- okay. I see it.

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Q. First sentence and second sentence, he states, quote, "Although the major part of the sales of this Company consists of cigarettes, what the Company is really selling is cigarette smoke."

MS. McDOLE: My copy has been crossed out here.

Q. "This Company, therefore, should be concerned with the physiological properties and composition of cigarette smoke"; correct?

A. That's the second sentence, yes, sir. There's a lot of -- there are a lot of marks on this page. I'm not sure. But go ahead. Yes, sir, that's correct. That's the second sentence.

Q. Okay. And you would agree with that; correct?

A. The "Company, therefore, should be concerned with the physiological properties and composition of cigarette smoke." Yes, that's true.

Q. Dr. Rodgman then goes on to analyze the evidence pro and con, correct, on page two?

MS. McDOLE: Well he actually goes on to write other things in this paragraph.

MR. O'FALLON: And if you want to talk about them when you get a chance to do redirect, be my guest.

MS. McDOLE: We're just skipping some

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things over, that's all.

MR. O'FALLON: You know, the jury will have this document. We plan to introduce it into evidence. They can read along.

A. Yes, sir. Excuse me just a second. Can I read this just a second?

MS. FORBES: Of course.

A. All right. Sir, where -- where are we now?

Q. The top. It says "The Evidence - Pro and Con"; correct?

A. All right, sir.

Q. And what he does is then goes through to analyze the evidence; correct?

A. He seems to discuss it. I don't know if he's analyzing it or not.

Q. You can't tell whether it's an analysis or just a discussion?

A. He could be just summarizing it. I don't know whether he's analyzing it or not, but he's -- he's citing some of the evidence.

Q. Let's go to the fourth page under "e. The Evidence to Date." He states, quote, "Obviously, the amount of evidence accumulated to indict cigarette smoke as a health hazard" --

A. Whoa, I'm lost. e., section e., is that what

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you're on?

Q. Yes.

A. All right, sir.

Q. Are you there?

A. I believe so, yes, sir.

Q. Okay. Here's what he says: Quote, "Obviously, the amount of evidence accumulated to indict cigarette smoke as a health hazard is overwhelming. The evidence challenging this indictment is scant"; correct?

A. That's what it says, yes, sir.

Q. Did R.J. Reynolds Tobacco Company in 1962 take out an advertisement that told the smoking public that the amount of evidence accumulated to indict cigarette smoke as a health hazard is overwhelming?

A. Not to my knowledge, no.

Q. That statement is certainly the exact opposite of telling the public that your products are not injurious to health; correct?

A. That's not what they said. They said we do not believe our products are injurious to health. I believe that was the statement, if I'm not mistaken.

Q. You know, the jury can go ahead and figure out what exactly you were attempting to convey with that. You understand that not everybody reads

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everything that's written like a wordsmith and tries to reinterpret every single statement; correct?

MS. McDOLE: You mean like you do?

Q. You understand that?

MS. McDOLE: Objection to the form of the question.

A. Mr. O'Fallon, different people process information differently. That is a fact. Now I have processed, to the best of my ability, the information you've put in front of me. The statement said we do not believe cig -- our products are injurious to health. That's my recollection.

Now, I am not aware of how the public in general would process that piece of information.

Q. Don't you think you ought to have some idea of what impact your statement's going to have on the public before you make it?

A. I don't think it's possible to have a detailed understanding of every -- the way any -- every -- everybody is going to interpret a statement, Mr. O'Fallon.

Q. You were trying to create an impression in 1954 with that statement, an impression that your products were not injurious to health; correct?

A. I wasn't trying to create any impression, and I

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don't know --

Q. You're here on behalf --

MS. McDOLE: Let him finish.

A. -- and I don't know what they were trying to convey. They made a statement of what they believed.

Q. You're here on behalf of R.J. Reynolds Tobacco Company as a corporate representative. You understand that?

A. Yes, sir, I do.

Q. R.J. Reynolds intended to convey the notion that their products were not dangerous when they made that statement back in 1954. That's a reasonable understanding; correct?

MS. McDOLE: Objection to the form of the question.

A. I don't know what they were trying to convey. They -- they stated we do not believe our products are injurious to health. That's a statement that they made.

MS. McDOLE: All right, let's take a break.

Q. And now --

MS. McDOLE: Let's take a break.

MR. O'FALLON: No, no, you do not call

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that. I'll call it.

MS. McDOLE: Well, oh, why do you have the right to call the breaks?

MR. O'FALLON: Because you can't interfere with my questioning right in the middle of a line of questioning.

MS. McDOLE: Well I think you're -- I think you're being rude to the witness, and that's not necessary. You know, I think you should just calm down. We should just take a break, take some deep breaths.

MR. O'FALLON: I'm not stopping.

MS. McDOLE: We've been going for over an hour.

MR. O'FALLON: We're going to continue on this document. When I'm done with this document --

MS. McDOLE: Well I'm sorry, I thought you had finished with the document. I thought you were asking just a series of argumentative questions. That's what --

MR. O'FALLON: Make your objection, ma'am. Have you read our court orders in this case? Have you?

MS. McDOLE: I'm not your witness, sir.

MR. O'FALLON: Have you?

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MS. McDOLE: I'm not your witness.

MR. O'FALLON: If you're not my witness, then just state what you're supposed to state, --

MS. McDOLE: I did.

MR. O'FALLON: -- "Objection."

MS. McDOLE: I did.

MR. O'FALLON: And then you went on to state a whole lot more.

MS. McDOLE: Well, I think your conduct with this witness is unnecessary and I don't think we have to put up with it. I'm just saying why don't you calm down, just ask your questions. You don't need to point your finger at him.

MR. O'FALLON: Are you done, ma'am?

MS. McDOLE: I'm answering, I'm responding to your comments.

MR. O'FALLON: "Objection," the basis.

MS. McDOLE: The record is not going to reflect that you continually like to point --

MR. O'FALLON: Okay. "Objection," the basis.

MS. McDOLE: -- your finger -- your finger --

MR. O'FALLON: And what are you doing? What's that?

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MS. McDOLE: That's right. Well I've picked it up from you, Dan.

MR. O'FALLON: Oh, yes. I'm such an influence on you. Put me down as your mentor next time.

BY MR. O'FALLON:

Q. Did you tell the public and doesn't the -- doesn't this document indicate that you now believe that the evidence accumulated to indict cigarette smoke as a health hazard is overwhelming?

MS. McDOLE: Objection, asked and answered.

A. I don't know what is believed at this point. I know what he wrote. I can say that, but I don't know what was in his mind when he wrote it, Mr. O'Fallon.

MR. O'FALLON: If you want to take your break, we can take our break now.

THE REPORTER: Off the record, please.

(Recess taken.)

(Plaintiffs' Exhibit 1106 was marked for identification.)

BY MR. O'FALLON:

Q. Dr. Simmons, R.J. Reynolds did not undertake to do biological or animal testing until sometime in the '60s; correct?

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A. I believe that's correct, Mr. O'Fallon.
Q. And they generally did that research, I believe, sometime between 1966 through 1970; correct?
A. I know that some was done in-house during that period of time, yes, sir.
Q. All right. You know that because you were part of that research; correct?
A. I was -- I joined Reynolds in December of 1968, yes, that's correct.
Q. And you joined them and worked in what's been referred to as the Mouse House; correct?
A. I was not in the Mouse House. I was in the biological research division. The Mouse House was a vivarium that was separate, across the street from the -- the research building.
Q. That research was suddenly terminated in 1970, was it not?
A. In March of 1970, the -- the division, the biological research division, was dissolved, yes.
Q. And I believe you've testified in previous depositions that you were rather shocked by that; it came as a surprise.
A. It came as -- "shocked" is a good -- is a good expression. I was all of a sudden with three young children and no job. Right, I was quite shocked.

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Q. And R.J. Reynolds wouldn't again take up any biological testing until after the '80s; correct?
A. I don't know.
Q. Now as part of that bio -- biological testing, it included tests using the inhalation of cigarette smoke in animals; correct?
A. The -- we were attempting to create a device -- two things with respect to cigarette smoke: Trying to build or engineer a device by which animals, laboratory animals, could be exposed to tobacco smoke by inhalation; the second part of that work was to try to develop techniques by which we could evaluate the response of certain biochemical systems in laboratory animals to inhaled tobacco smoke.
Q. And as part of those animal tests, you actually produced emphysema in the lungs of animals exposed to tobacco smoke; correct?
A. I can't say that we actually did that, no, sir.
Q. You're not aware that that was done?
A. There were -- the pathologist that looked at those -- at those lung slides indicated that the animals that we were exposing -- and -- and we exposed some rats, some rabbits to tobacco smoke by one way or -- or another -- were infected with different types of pneumonia. They were -- there was

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even a suggestion at one time that we might have had tuberculosis involved in some of those animals, so the animals were infected.

There were lesions that could be interpreted as emphysema, but we saw those lesions in -- in exposed animals as well as control animals, so --

Q. Let me hand you what's been marked as Plaintiffs' Exhibit 1084. This is a Philip Morris document dated December 15th, 1969; correct?

A. That is correct, yes.

Q. This is from a -- it appears to be from an L. Weissenbecker; correct?

A. It looks like an L. Weissbecker. Is that -- am I saying that correctly?

Q. You're probably closer than I was. In any event, he writes that, quote, "I met Dr. Price from R. J. Reynolds at the CTR-USA meeting of December 11 and 12, 1969"; correct?

A. That is the -- the opening sentence, yes, sir.

Q. Okay. Was there a Dr. Price at R.J. Reynolds during this time period?

A. I have attempted, being aware of this document, made aware of this document fairly recently and was asked a question about Dr. Price, and I have had our people, personnel people, go back in the personnel

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records. I did not personally know a Dr. Price and nobody can find a Dr. Price in our employ at that period of time, so I don't know who this -- who Mr. Weissbecker is -- is referring to, if that's a mister; it may be Mrs. Weissbecker. But I don't know who this person is referring to when they talk about a Dr. Price. I did not know a Dr. Price.

Q. There's a possibility that maybe they just got the name wrong; correct?

A. That's certainly entirely possible. I mean, I -- I don't know any circumstances -- I just didn't know a Dr. Price and have been able -- been unable to confirm that there was a Dr. Price employed by R.J. Reynolds.

Q. In any event, whoever this was mentioned doing chronic cigarette smoke exposure studies with rats; correct?

A. Well, I don't know what the person named Price told the person named Weissbecker, but the person named Weissbecker, if he is writing this memo, suggested that the conversation got around to chronic cigarette smoke exposure studies with rats. That's -- that's in the memo, yes, sir.

Q. And in fact, R.J. Reynolds was doing chronic cigarette smoke exposure studies with rats at this

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time; correct?
A. No, sir.
Q. Okay. It also says "The animals received up to 500 cigarettes and emphysema was produced"; correct?
A. Let me read further.
That is the next sentence, that is correct.
Q. And that's again R.J. Reynolds did find emphysema on smoke exposure studies; correct?
MS. McDOLE: Objection, asked and answered.
A. What we found on pathology we could not attribute to cigarette smoke, no, sir.
Q. You did find emphysema on pathology; correct?
A. In both control animals -- well, I better correct that.
We found or the pathologist reported finding in some animals, both control and sham-exposed animals, tissue changes which might represent a diffuse emphysema. It could -- origins of that emphysema were because you were -- you were seeing changes in both chronic and -- and -- I mean, excuse me, in both exposed and control animals --
Q. What do you --
A. -- indicated that there probably was an infection involved, but I -- you know, that's a --

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Q. Are you basing this testimony on internal documents you've seen or are you basing it on the Brubaker report?
A. I have seen a redacted version of the Brubaker report.
Q. When were you first shown that?
A. I saw that during the course of the Kueper trial in Belleville, Illinois. It was an issue there and I asked to see a copy of it and was shown a redacted copy.
Q. You were shown portions of the Brubaker report prior to having a television interview conducted, correct, or a newspaper interview?
A. Prior to the -- prior to the trial, I was shown some pages of the Brubaker report. I -- I recollect seeing four, five pages of the Brubaker report prior to the beginning of the trial, yes, sir.
Q. Well you were shown that, though, prior to your going on to speak about a Dr. Colucci's allegations about what those studies found; correct?
A. I'm not sure --
Q. Not in trial, but I believe there was some kind of a reporter that was going to be interviewing you.
A. You mean after the trial?
Q. No, I mean before the trial.

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A. Right. There was a reporter, a Mr. Justin
Cantanoso -- better check that name -- with the
Greensboro newspaper that had interviewed Dr. Colucci
in some way or another and had printed some
allegations and I wanted to talk to him also, and I
was given four or five pages of that Brubaker
report -- I don't recall how many -- to look at.
There was nothing remarkable in what I saw, and --
and then I did an interview. As a matter of fact, I
think I actually did two interviews with
Mr. Cantanoso at one time or another.
Q. You were shown that portion of the Brubaker
report by whom, an attorney?
A. I believe -- this is a number of years ago. I
believe it was an attorney from Jones Day. I believe
it was Mr. Bob Weber is the person who showed me four
or five of those pages.
Q. And you've subsequently seen a redacted version
of the Brubaker report; correct?
A. I had that in my hands for four or five hours
one night during the trial in Belleville, yes.
Q. So you reviewed it in order to testify in a
trial on behalf of R.J. Reynolds Tobacco Company;
correct?
A. I requested of Mr. Paul Crist, who was counsel

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for R.J. Reynolds in that trial. I made a request to him if -- if Mr. Bruce Cook is going to be asking me questions about this thing, maybe I had better look at it.

Q. Did you produce that Brubaker report to Mr. Cook?

A. I beg your pardon?

Q. Was that Brubaker report produced to Mr. Cook?

A. As I understand it, our counsel produced a redacted version to the court. I don't -- I don't know -- and Mr. -- Mr. Cook certainly had a copy of the re -- redacted version. That's my understanding, Mr. O'Fallon.

Q. I'd like to show you a document that we've marked as Plaintiffs' Exhibit 1106. For the record, this is a document Bates stamp numbered 51559 6267 through -- strike that -- through 273. Let's look on the first page of this document.

Have you seen this document previously?

A. I have looked at it briefly. I don't recall a lot about it, but I have -- I've certainly seen the document, yes, sir.

Q. Are there numerous other memos that have also been produced by Reynolds relating to this 1968-to-1970 research with rats, rabbits and other

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animals?

A. Could you be more specific. I -- I don't know exactly what you're talking about.

Q. Are there more memos similar to this one concerning that 1968 research?

A. This looks to me like -- hang on just one second. Can I -- yeah, it looks like he's -- he's going July 16 to August 15, 1968. It looks like a monthly report, so it could very well be that in his monthly reports he periodically updated management on what was going on there, I suspect. I don't know.

Q. Have you ever read the other monthly reports?

A. I may have, Mr. O'Fallon. It's been an awfully long time ago if I have.

Q. Within the last couple of years?

A. Probably not within the last two years.

Q. So you haven't went back and looked at this, the monthly reports. Have you looked at the lab notebooks? Did you go through those in detail?

A. Now, several years ago when the -- the issue emerged with respect to the Brubaker report, there were rumors and so forth around that information had been destroyed or that quarterly reports had been destroyed or that notebooks had been destroyed. All of that information was being bandied about. I went

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to our archives and checked and confirmed that all of that information was still in our archives.

Q. Including all these monthly reports like this?

A. Now I was -- the issue I was dealing with was our lab notebooks and the reports that we in the laboratory generated from that -- that laboratory work. I did not try to look through all of Dr. Nielson's monthly reports.

Q. Were those formal reports?

A. I'm not sure what you mean by "formal."

Q. Were they typed?

A. Which reports are we talking about now?

Q. I'm talking about the reports that you said that you still saw, your -- your reports of the work.

A. Okay. They had been typed, yes, sir.

Q. Okay. And who specifically was working on the smoking rats?

A. Oh, that's been a long time ago. I don't remember specifically. I -- I don't remember specifically the individuals that were involved in the smoking rats. I know that in the development of a smoking machine, I believe it was Dr. Gene Fluck that had responsibility for the development of that smoking machine.

Q. Let's -- Dr. Gene --

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But you don't know who was doing the smoking rat
studies that are referred to on the first full page
of the report here by Dr. Nielson?
A. Would you please repeat -- repeat that
question.
Q. Sure. Do you have the report in front of you?
You're on the first page; right?
A. I'm on the first page, right.
Q. Roman numeral II says "Smoking Rats"; correct?
A. Right, uh-huh.
Q. You can't tell me as you sit here today who did
that research?
A. If you look at -- at what it says down here, it
says there was a rat which had smoked Tempo
cigarettes via, by way of, an indwelling tracheal
cannula.
Q. Okay. I'm going to move to strike that as
nonresponsive. For right now let's just stick with
answering my question, which is: Who did this?
A. That's what I'm trying -- okay. That's the -- I
don't remember that at all.
Q. Fine.
A. See, I have no recollection of that. Dr. Fluck
was working with rats, but this particular -- and I
don't know who had responsibility for this particular

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animal.

Q. Okay. And you're right, what this talks about is "The chronic exposure of rats to smoke is continuing"; correct?

A. It says "... chronic exposure" to -- "of rats to smoke is continuing."

Q. Right. It says "The number of exposures was increased to two a day on July 16" of "1968"; correct?

A. That is correct.

Q. It states "The histology of the tissues from the rat which had smoked TEMPO cigarettes via an indwelling tracheal cannula has been completed with the results" giving -- "given on the following page"; correct?

A. That's correct.

Q. Result number one was "A diffuse, marked emphysema throughout the lungs"; correct?

A. That is the first statement, yes.

Q. So you have evidence of emphysema?

A. No, sir.

Q. That's what it says.

A. Mr. O'Fallon, that is the most simplistic interpretation of that result that I could possibly imagine. I have one experimental animal with an

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indwelling tracheal cannula in which I do not have statistical significance, I do not have a sham-exposed animal to know what the control would look like in this case. The control may have looked the same as this particular animal.

The animal with -- a rat with an indwelling tracheal cannula is going to have more infection than you can possibly imagine, and to make the assumption that because I -- I saw emphysema in one animal exposed this way would be -- you'd be laughed out of the scientific community to try to publish something like that.

Q. Did you ever think about doing the experiment right?

A. That's what we were trying to learn how to do.

Q. And you never completed that, did you, sir?

A. We did. We developed a smoke -- a machine by which animals could be exposed nose only, by inhalation, without having an invasive technique, such as an indwelling tracheal cannula. We were trying to get away from that type of invasive technique. It's what we were trying to do.

Now that was the purpose of -- the major purpose of that work was to develop that smoking machine, and -- and -- and as a matter of fact, it was done.

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Q. Okay. And so you did do chronic exposure studies with rats?

A. No, we didn't do a chronic exposure. There is a -- a definite definition for chronic exposure. Chronic exposure is a lifetime exposure. In other words, you take animals for at least two years out for a chronic exposure. A subchronic exposure is -- is called a 90-day study.

Now this particular animal right here, Dr. Senkus calls this a -- a chronic -- I noticed that phrase over here. He said that this was of rats -- chronic exposure of rats, but these animals were not exposed more than 90 days to maybe 180 days, but they were not -- a chronic would be a 2-year study, and this -- these were subchronic studies.

Q. Did you ever do a chronic exposure study in rats to see if you produced emphysema upon inhalation of cigarette smoke?

A. We did not do chronic exposures in these animals.

Q. So you had evidence that inhalation of cigarette smoke did create emphysema and you never followed up and did another study to see whether it was a real problem or not?

MS. McDOLE: Objection to the assumption

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and the misstatement.
A. We did not have evidence that it produced emphysema. We had evidence that infection in this one animal may have caused him to have a diffuse -- a marked, diffuse emphysema.
Q. Why don't you show me where it says "infection" anywhere on this document, sir.
A. There are other documents from that time period that -- that referred to the in -- the in -- the infection in this particular animal.
Q. Written by who?
A. I believe that the pathologist at that time was a Dr. Johnson, Johnson or a Dr. Johnston. I don't recall the exact spelling of his name.
Q. The fact is, though, you never followed up on this study, did you?
MS. McDOLE: Objection to the form.
A. We did not do inhalation ex -- chronic inhalation exposures in these animals, no.
Q. You had at least --
This is one example where you produced emphysema. I think you've testified previously that you had rabbits with emphysema and I think you've testified previously you had other rats with emphysema, so you've got three different experiments

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that produce emphysema.

MS. McDOLE: Objection to the --

A. We had some very --

MS. McDOLE: Objection to the misstatement of the record.

A. That is -- that is just a misstatement. We had very strong evidence that pneumonia produced an emphysema-like condition in these animals, and that has been published by others. I mean, other studies have been done to show that.

Q. You never redid the test to figure out if you were right or wrong, though, did you?

A. We did not, sir.

Q. No. Instead R.J. Reynolds pulled the plug on the research, didn't they?

MS. McDOLE: Objection to the form.

A. The -- R.J. Reynolds dissolved the biological division for several reasons, but one of them was we had completed one of the major tasks that we had, and that was to develop, as best we could, an inhal -- a machine by which laboratory animals could be exposed by inhalation to cigarette smoke -- or to tobacco smoke. That was turned over to The Council for Tobacco Research. That was one of the objectives, and then there were a couple of other reasons that

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the division was dissolved.
Q. Move to strike as nonresponsive. I didn't ask you why it was dissolved. I asked you if it was dissolved, and it was, wasn't it?
MS. McDOLE: Well no, it was a much more loaded question than that. I think the answer was fine.
A. The division was dissolved, but --
Q. And you were terminated?
A. Well I wasn't killed, Mr. O'Fallon, but I was released from employment and I went on to other employment.
Q. Okay. Well let's use -- I know you have --
You know, I know you like to be very precise in your language, so let's say "fired." How's that?
A. How about "laid off"?
Q. You got a problem with "fired"?
A. I don't think I was fired.
Q. You weren't kept around, were you?
A. No, sir, I was laid off.
Q. Because R.J. Reynolds decided they no longer wanted to do biological research on animals --
MS. McDOLE: Objection.
Q. -- as one of the reasons; correct?
A. No, sir, that's not correct.

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Q. So is it your testimony that they continued to do inhalation studies on animals?
A. It is my contention that they continued to support research that involved inhalation studies on animals.
Q. Through third parties so it would be much harder to discover; right?
MS. McDOLE: Objection to the form of the question.
A. I don't even understand the question.
Q. Okay. That's fair.
R.J. Reynolds has continued throughout the years to deny that there's any causal connection between smoking and disease; correct?
A. The -- to properly characterize R.J. Reynolds' position and statements, it is that while smoking may cause human disease, it has not been proved to a final scientific certainty that that is the case.
Q. Well let's see if that's how Mr. Horrigan stated it in 1984 when he went on Ted Koppel.
A. Through with this one?
Q. I'm going to show you what's been marked as Plaintiffs' Exhibit 420.
A. Is -- are you through with this?
Q. Yes.

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You're familiar with Mr. Horrigan, are you not?
A. I have met Mr. Horrigan once a number of years ago, yes, sir.
Q. He was the president and CEO of R.J. Reynolds, correct, R.J. Reynolds Tobacco Company?
A. As I understand it, that's correct, yes, sir.
Q. And he was there when you started back again with R.J. Reynolds in 1984; correct?
A. I believe that's correct, yes, sir.
Q. Okay. And he apparently appeared on Nightline with Ted Koppel; correct?
A. I'm not familiar with that. I understand that he did. I was not aware of it at the time.
Q. Okay. And this is a transcript of that. Let's see what Mr. Horrigan has to say about cigarette -- about cigarettes and cancer. Let's turn to 50237 1216.
A. 1216?
Q. Uh-huh.
A. All right, sir.
Q. Okay. Ted Koppel towards the bottom of the page says, quote, "Cigarette smoking does not cause cancer, yes or no?" Mr. Horrigan responds, "It is not known whether cigarettes cause cancer"; correct?
A. That's what he says.

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Q. Does that fairly state R.J. Reynolds Tobacco Company's position as of 1984 as stated by the president of the company?

A. He makes a very simple statement that it is not known whether -- whether or not -- well whether cigarettes cause cancer.

Q. He then says, "Cigarette smoking - no causal relationship between cigarette smoking and emphysema." His response is, going over to the next page, "Despite all of the research to date, there has been no causal link established"; correct?

A. That's what he says, yes, sir.

Q. He never mentioned that R.J. Reynolds had some indications of emphysema in the late '60s and didn't follow up, does he?

MS. McDOLE: Objection to the assumption and to the misstatement.

A. If he had said something like that, it would have been incorrect.

Q. And it's true publicly that R.J. Reynolds continues to this day to deny that there's a causal link between cigarette smoking and disease; correct?

A. That is a simplistic way of saying it. I've stated it --

Q. I'm a simple man.

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A. The --

MS. FORBES: Let the witness finish his answer.

A. The overall position is that cigarettes may cause some human disease, but the final scientific proof of that causation has not been established.

Q. Is it more likely than not that cigarette smoking causes human disease?

A. I do not know.

Q. Is it more likely than not that cigarette smoking causes lung cancer?

A. I do not know.

Q. You can't even give me a percentage?

A. No, sir, I can't.

Q. You can't say that the scientific community has proven to a probability that cigarette smoking in fact causes lung cancer?

MS. McDOLE: Objection to the form of the question.

A. I don't know how to make that kind of computation, Mr. O'Fallon.

Q. Well it would be a little more than 51 percent.

A. I don't know.

Q. You don't know how to make that kind of computation?

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A. I don't know how I would arrive at a conclusion of 51 percent.

Q. More likely than not. Do you know how to do that?

A. I don't --

MS. McDOLE: Objection.

A. I don't know whether it is more likely or not. I don't know.

MS. McDOLE: Objection, argumentative.

Q. So it's R.J. Reynolds' testimony that it may be less likely than not that cigarette smoke causes cancer or it may be more likely than not that cigarette smoking causes cancer? We just don't know?

MS. McDOLE: Well that's your testimony. This witness has already responded to the question.

MR. O'FALLON: It's "Objection."

MS. McDOLE: You've asked that question. He's answered it.

MR. O'FALLON: Are you stating an objection, ma'am? I'm not hearing that word.

MS. McDOLE: Objection, asked and answered.

MR. O'FALLON: Thank you.

Would you please answer.

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THE WITNESS: Would you restate the question.

MR. O'FALLON: Certainly. Want to read it back.

(Record read by the court reporter.)

A. I don't think that's a fair characterization. I think what -- what I -- I have said as a fair characterization is that while cigarette smoking may cause some human disease, the final proof of that, scientific proof of that, has not been established. That is my answer to it.

Q. So it would be reasonable for a cigarette smoker who has listened to R.J. Reynolds throughout the years deny that causation is proven to believe themselves that in fact it's not known whether cigarette smoking causes cancer; correct?

MS. McDOLE: Objection to the form of that question.

A. The -- the thing that the cigarette smoker does believe is, according to all of the surveys I've seen, that the smoker believes that smoking causes lung cancer, and that warning has in fact been mandated by Congress to go on the packs. So getting me to try to speculate as to what a smoker believes or doesn't believe or how he's influenced by

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statements is not reasonable. I don't know how to do that.

Q. Do you think it's reasonable as you sit here today for you to believe that it's not known whether or not cigarette smoke causes cancer?

A. I do not see the final proof. Now I'm a smoker, and I smoke a pack to a pack and a half of cigarettes per day. I have seen the epidemiology. I've seen the animal studies, have looked at a lot of evidence. I cannot swear to a scientific certainty that it has been proved, to my satisfaction, that smoking causes lung cancer in humans. It might.

Q. And you believe that your opinion is a reasonable opinion; correct?

A. It's reasonable to me, Mr. O'Fallon.

Q. And it would be equally reasonable for someone else to hold that opinion who is not you; correct?

A. I don't --

MS. McDOLE: Objection to the form of that question.

A. I don't know how to determine what's reasonable for somebody else to think, Mr. O'Fallon.

Q. You don't?

A. I don't get inside somebody else's mind.

Q. Well R.J. Reynolds has not hesitated to make

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public statements stating that they don't believe it's been proven that cigarette smoking causes disease. Do you think it's reasonable for someone to rely on what R.J. Reynolds has to say?

MS. McDOLE: That they do not believe that it causes disease?

MR. O'FALLON: Is that an objection?

MS. McDOLE: Objection.

MR. O'FALLON: Thank you. Why don't you read back my question.

(Record read by the court reporter.)

A. And I answered that, I thought. I don't know what is reasonable for somebody else to believe. It -- we have -- R.J. Reynolds, Philip Morris, the industry has a right through the First Amendment to state their own beliefs on a subject. Now what other people believe is their business and how they -- how they make a determination is their business.

Q. Well does the industry believe it's a reasonable belief?

A. I'm sorry?

Q. Does the industry believe that they hold a reasonable belief?

MS. McDOLE: You're talking about RJR or the industry as a whole?

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MR. O'FALLON: Is that objection?

MS. McDOLE: Objection to the form.

MR. O'FALLON: Thank you. You know, really, if you want to ask questions, you've got plenty of time later on. Okay? If you want to answer questions, you take oath, I'll ask them of you. But if you don't, state the objection, and we'd go a lot faster.

MS. McDOLE: Thanks for your tip.

MR. O'FALLON: Well you -- you think I'm an influence, so --

MS. McDOLE: No, I -- I don't.

MR. O'FALLON: Why don't we restate the question. Do you want to read it back, please.

(Record read by the court reporter.)

A. To me, it's a reasonable belief.

Q. Then it certainly ought to be reasonable for people outside the industry to hold that belief; correct?

A. I don't speak for people outside the industry. I don't speak for other people. What's reasonable for me may not be reasonable for other people, Mr. O'Fallon, and vice versa.

Q. And again, R.J. Reynolds has continued to maintain that the cause and effect is not shown as

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illustrated by the next document I'm going to have you look at, which I'll ask him to mark.

A. Is this --

Q. We're done.

(Plaintiffs' Exhibit 1107 was marked for identification.)

BY MR. O'FALLON:

Q. This is a letter that was sent by R.J. Reynolds, a Ms. -- Mrs. Jo F. Spach, to a woman in Minnesota, and it's dated December 29th, 1988. I'd like you to look at the third paragraph. In this letter R.J. Reynolds states, quote, "Despite all the research going on, the simple and unfortunate fact is that scientists do not know the cause or causes of the chronic diseases reported to be associated with smoking"; correct?

A. That's correct, yes, sir.

Q. R.J. Reynolds doesn't state that smoking might be a cause, does it?

A. I don't -- I don't see it here.

Q. So apparently the statement that you've given me of RJR's official position has not always been its official position; correct?

MS. McDOLE: Well objection to the form of that question.

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A. I don't see how you could reach that conclusion from this particular letter.
Q. Well this is a statement by RJR Reynolds; correct?
A. It is a statement written by somebody who was with R.J. Reynolds in 1988. I don't -- I don't know the circumstances behind this letter and --
Q. This is a form letter, isn't it, sir?
MS. McDOLE: Let him finish, please.
A. -- so I don't know how to interpret what it says.
Q. This is just one of your standard form letters that you send out to people who send you mail; correct?
A. I don't know whether it's a form letter or not, Mr. O'Fallon.
Q. Don't you think that people in the public information and the public relations department at R.J. Reynolds would probably speak for Reynolds accurately?
A. I'm sure that they speak as accurately as they can for Reynolds, yes, sir.
Q. They don't tell Ms. Olson that, you know, "In 1962 our own scientist looked at this and concluded that the amount of evidence accumulated to indict

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cigarette smoke as a health hazard is overwhelming. The evidence challenging this indictment is scant." They don't say that, do they?

A. I don't know the circumstances under which this letter was written. I don't know what it's in response to. It's obviously written in -- in response to -- to a Mrs. Olson. I don't know. That would have sort of determined what they put into the letter. I mean, I don't know what she inquired about. I don't know what she said, and I don't know why the letter was written.

Q. In any event, they don't include the statement from Mr. Rodg -- from Dr. Rodgman's 1962 memo, do they?

A. I don't see it in here, Mr. O'Fallon.

Q. Nor did Mr. Horrigan when he was interviewed on national television in 1984 by Mr. Koppel. He didn't include that statement in his responses, did he?

A. I don't recall seeing it, no, sir.

Q. Nor have you as you've sat here today, have you?

MS. McDOLE: Nor has he what?

Q. Nor have you included those kinds of statements. You haven't said that the evidence indicting cigarette smoking is overwhelming while the

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evidence to the contrary is --
A. I haven't said that, no, sir. That's correct.
Q. Nor have you said anything that would even suggest that, have you, sir?
A. I have not.
Q. So in short, R.J. Reynolds has withheld information it has had in its files for years from the public; correct?
A. Not to my knowledge, Mr. O'Fallon.
Q. Did RJR ever publish that statement of Dr. Rodgman's?
A. I don't know that I would call that information, Mr. O'Fallon.
Q. Okay. How about facts? Did they ever publish that fact?
A. I don't know that it's a fact. It's something that he wrote in a -- in a survey of -- of the literature, and I don't know that there was any reason to -- to publish it.
Q. Other than the fact that you voluntarily undertook a duty to the public, right, in 1954?
MS. McDOLE: Objection to the form. What duty are you talking about?
Q. Remember that duty that you undertook in 1954? Remember that language?

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A. I recall the Frank Statement, yes.
Q. Okay. Well let's call it -- let's --
Let's change the wording. I know you are concerned about words, so let's talk about responsibility. Again in 1954 the tobacco industry, including R.J. Reynolds Tobacco, accepted an interest in people's health as a basic responsibility; correct?
A. That's in that particular statement, yes, sir.
Q. And at no time has R.J. Reynolds ever disavowed that responsibility; correct?
A. Not to my knowledge.
Q. Okay. Let's move on to one other issue.
RJR has not hesitated to exploit health concerns when it were to their benefit; correct?
MS. McDOLE: Objection to the form of the question.
A. I don't even know what that means.
Q. Well you know there's a lot of smokers out there that would like to give up smoking; correct?
A. I haven't done a survey. I don't know. There may be a lot of people that would like to stop; there may not. I don't -- I don't know, Mr. O'Fallon.
Q. And you know that some of those people actually have went to switch to low-tar cigarettes in order to

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decrease their tar intake; correct?
A. That may be the case, Mr. O'Fallon. Once again, I -- I -- people smoke cigarettes for very different reasons and have different requirements out of a cigarette, which is why there are so many brands on the market, so, you know, I'm not sure what motivates people to smoke.
Q. In fact, RJR has made public statements through their advertising to the effect that if you smoke certain RJR brands, you will in fact reduce your tar consumption; correct?
A. They may have. I don't know. I'm not --
Q. Well let's take a look at some of the ads.
MR. O'FALLON: Why don't you mark that. Let me mark two in a row actually.
(Plaintiffs' Exhibits 1108 and 1109 were marked for identification.)
BY MR. O'FALLON:
Q. 1108 and 1109 are Bates stamp numbered 500713769 and 500713420 respectively. Do you have those two documents in front of you?
A. I do have, yes.
Q. Let's first look at 1109.
A. All right, sir.
Q. Look at the sixth paragraph down. It says

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Source: https://www.industrydocuments.ucsf.edu/docs/lxhd0001

"Vantage cuts down substantially on the 'tar' and nicotine you may have become concerned about. Without cutting out the satisfying tobacco flavor you've come to appreciate"; correct?
A. That's the statement, yes, sir.
Q. Okay. Vantage is an R.J. Reynolds product; correct?
A. It is, yes, sir.
Q. The clear implication there is that if a smoker smokes Vantage, they will receive less tar; correct?
MS. McDOLE: Objection to the form of that question.
A. I'm not in advertising and I'm not sure. I believe that I would interpret that that way, that -- I didn't write this ad, but I -- I see the -- I see the sentence. I see the statement, and I think it's reasonable to say that somebody might interpret it to say that, "Okay, I -- it will reduce the tar." This -- this is a lower-tar cigarette. I think that's what they're --
Q. Let's look at the next document. Is that Plaintiffs' Exhibit 1108?
A. Yes, sir.
Q. Look down to the -- the sixth paragraph there. It states, quote, "Vantage cigarettes, either filter

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or menthol, deliver considerably less 'tar' and less nicotine than most cigarettes"; correct?

A. That's the statement, yes, sir.

Q. And it would be reasonable for a person who read that to believe that if they smoked Vantage, they would actually get less tar and less nicotine from that cigarette; correct?

A. That might be a reasonable assumption, yes, sir.

Q. In fact, R.J. Reynolds knew that people would get the same amount of tar and nicotine if they switched to these, quote, unquote, "lower-tar brands" due to a phenomenon known as smoker compensation; correct?

A. No, sir.

Q. You believe that's not true?

A. I have seen evidence to the effect that that is not true.

(Plaintiffs' Exhibit 1110 was marked for identification.)

BY MR. O'FALLON:

Q. Plaintiffs' Exhibit 1110 is a document Bates stamp numbered 50551 9347 through 50551 9350. It's dated April 2nd, 1987, and it's entitled "Summary of 1986 Smoking Behavior Research"; correct?

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A.   That is the subject of a memo, yes, sir.
Q.   Okay. Have you seen this memo before?
A.   I don't recall it, no, sir.
Q.   Let's look at the third page of the document.
A.   All right, sir.
Q.   Specifically number two. Are you there, where it says "Smoke Delivery Replication Results"?
A.   I see it, yes, sir.
Q.   Okay. It says, quote, "'Tar,'" end quote, "deliveries measured" by "the human-mimic smoking machine ... were increased relative to the standard FTC method by 22 percent for full-flavor products, 67 percent for the full-flavor/low-tar products and by 400 percent for the ultralow-tar products"; correct?
A.   That is -- that's the statement, yes, sir.
Q.   Okay. It says "Nicotine deliveries were also greater than FTC values but the increases were not as large as for 'tar'"; correct?
A.   That is the next sentence, yes, sir.
Q.   Okay. So this would indicate that the tar that the smokers are actually getting is substantially greater than anything reported by FTC method; correct?
A.   Now, Mr. O'Fallon, I have not seen the data from which these percentages were -- were computed, so I

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don't know how to interpret the statement. I have seen other studies that were along this line that I could interpret, but I'm not sure how these computations were made and what they refer to. I'm not sure how to interpret this. I -- one interpretation might be that it was greater than the FTC reported, yes.

Q. Well that's what it basically says, isn't it?

MS. McDOLE: Objection to the form.

A. I'm -- it -- it could be interpreted that way, yes, sir.

Q. That would be a reasonable interpretation; correct?

MS. McDOLE: Well this document is ob -- well, objection to the form. You can ask Dr. Robinson about this tomorrow. He actually received the document.

A. I'm not -- not having the data in front of me, I'm not sure how to interpret the statement, or not having seen the data.

(Plaintiffs' Exhibit 1111 was marked for identification.)

BY MR. O'FALLON:

Q. This is a document Bates stamp numbered 50897 8013 through 8025; correct?

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A. That's correct, yes, sir.
Q. And this is a document you did receive; correct?
A. I may -- can I -- can I just look through this just a second?
Q. Sure. Well let's ask a preliminary question here.
You're listed on the front of the document; correct?
A. I may -- I don't remember. What is the date on this thing? I may have written this document.
I don't recall. I -- I have looked at this issue before and I may have written some of the material in the document, --
Q. Okay.
A. -- Mr. O'Fallon.
Q. Let's go to the first page, the first full page of the document.
A. All right, sir.
Q. This is entitled "THE OVER-SMOKING ISSUE (Tar to Nicotine Ratio)"; correct?
A. Exactly, yes, sir.
Q. Okay. It says that "It has been argued for several years that low tar and ultra-low tar cigarettes are not really what they are claimed to

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be"; correct?
A. That is the opening sentence, yes, sir.
Q. It says "Numerous investigators from the United States, Canada and the United Kingdom have studied the way in which smokers smoke full flavor ... full flavor low tar ... and ultra-low tar cigarettes and have concluded that," and then they go forward to list the conclusions; correct?
A. That's correct, yes, sir.
Q. The first conclusion is that "Each individual smoker has his or her own nicotine requirement from each cigarette"; correct?
A. That is the first -- that's the first conclusion, yes, sir.
Q. Okay. "2. Virtually all cigarettes can be made to yield the desired amounts of nicotine depending on the size of the puff taken and the extent to which the puff is inhaled"; correct?
A. That's correct. There's a further statement there this is referred to as the smoking maneuver by some people.
Q. Correct, right. And it's also referred to as compensation; correct?
A. The -- the paper -- it may be. The paper I'm referring to I recall was written by a scientist from

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the U.K. that referred to it as the smoking maneuver, and -- and that was --

Q. Okay. What this really means is that if a person smokes to receive "X" amount of nicotine, they're going to receive "X" amount of nicotine regardless of which cigarette they smoke, whether it's a full-flavor Camel or whether it's a Vantage that claims to have lower tar?

MS. McDOLE: Objection to the mischaracterization of the document.

A. That is -- that is the -- the issue that's being investigated. You see, that depends on one -- well it depends a lot on how the smoke is perceived by the smoker. For example, if it's a harsh cigarette, it's -- if it -- if it has a lot of bitterness or a lot of harshness, the smoker may not attempt to get -- may not attempt to oversmoke. This -- this is one of the issues that's -- that's under investigation.

The -- the document being referred to primarily here is the Froggatt Commission report, which came out of the United Kingdom -- United Kingdom. It came -- it was -- Peter Froggatt and -- and Nicholas Wald sort of cochaired something called the Froggatt Commission in which they were making recommendations

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to quasi-government organizations. They were making recommendations for cigarette design, and to a certain extent this document reviews that issue.

You'll notice the last sentence on this page that we're looking at, "In reality, however, ultralow-tar cigarettes have T-to-N rations somewhat lower than full-flavor or full-flavor/low-tar cigarettes ... and a smoker of" the "ultralow-tar" cigarette "actually does reduce his tar intake to some degree." Even if he oversmokes it a little bit, he still is going to get lower from an ultralow than he is from a full flavor.

Q. But that's not true of a full-flavor/low-tar cigarette; correct?

A. Of an -- of an FFLT cigarette?

Q. Correct.

A. I don't recall. I'm not sure.

Q. Well that's not -- it says it right there. I mean, let's go back to your statement. It says "In reality, however, ULT cigarettes," ultralow-tar cigarettes, "have tar/nicotine" -- and I think that should be "ratios somewhat lower than full-flavor or full-flavor/low-tar cigarettes ... and a smoker of" a "ULT actually does reduce his tar intake to some degree," the implication being the full-flavor and

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the full-flavor/low-tar cigarettes do not reduce their tar; correct?

A. I don't recall. I don't recall. Maybe that's true. I don't recall the calculation.

Q. Well the results are stated at the back on page three. It states "The results of both these studies are consistent with the propositions that:

"1. Smokers of low yield cigarettes adjust their smoking maneuver to obtain some desired level of nicotine and therefore concomitantly increase their tar intake"; correct?

A. That's the first conclusion.

Q. Okay. So we would know that low-tar cigarette smokers are going to actually smoke the cigarette so they get more tar than they think they're going to get; correct?

MS. McDOLE: Objection to the form of the question.

A. I don't think that's the case. I think that what this is saying is that the smokers are different from the smoking machine. I mean, the -- the -- the Federal Trade Commission standard smoking paradigm was created in the 1960s, as I recall, and it was created in order to just get a comparison from -- for various cigarettes. Now what -- what the smoker gets

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from a cigarette is to a certain extent dependent on his own personal smoking maneuver.

Q. Let's go back to the advertisements. Let's go back to the Vantage advertisements. Now Vantage is a full-flavor/low-tar cigarette; correct?

A. This particular ad is referring to the full-flavor/low-tar cigarette, yes.

Q. That's not an ultralow-tar cigarette; correct?

A. Not in this ad, no, sir.

Q. You don't tell the smoker anywhere there that they may not get one ounce less tar than they are from their current cigarette, do you, sir?

MS. McDOLE: Well objection to the form of the question. That was a '75 ad and you showed him a 1986 document. Is that what this is?

Objection to the misleading character of the question.

A. The -- I don't see any reason to believe that they would not reduce their tar intake.

Q. Well if they compensate, they won't reduce their tar intake at all?

A. Well it depends on how much they actually compensate.

Q. Well your own internal documents show that they compensate quite a bit.

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MS. McDOLE: Objection to the form of that question.

Q. The document I just showed you, the 1986 document, showed that a full-flavor/low-tar smoker compensates 67 percent over FTC measurements.

A. And I'm not sure what that means. I think you need to talk to the person who took that data. I'm not sure what that exactly means. I haven't seen those data. I have seen other studies that were conducted by Dr. Wald, Nicholas Wald, and -- and his indication was if you look at the data, that while if you go to a reduced-tar cigarette, you may not get 100 percent of the reduction that is advertised by the FTC method, but you still get some reduction.

Q. And they might not get the reduction that's advertised or claimed by the cigarette manufacturers either; correct?

MS. McDOLE: Objection to the form of the question. I don't know what you're referring to.

A. I would think -- I would think that they would get a reduction. I'm not sure what the question means, I mean, what you're trying to ask.

Q. Well you use the numbers to imply a reduction of a certain percent, and they will probably not get the reduction you imply; correct?

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MS. McDOLE: Objection to the word "imply."

A. The -- the numbers that are used were mandated by the Federal Trade Commission, Mr. O'Fallon, that everybody's cigarettes were put through exactly the same test for comparative purposes.

Q. And you've never told the cigarette -- the smoking public that in fact with a low-tar cigarette, you may not have any reduction in tar because you're going to compensate so that you maintain the same amount of nicotine? You've never told the smoking public that; correct?

MS. McDOLE: Objection to the assumption that that is the fact.

A. Yeah, I don't know whether that's true or not. I don't know the answer to your question.

Q. Even though you may have wrote this document; correct?

A. I'm sorry?

Q. Even though it's your testimony that you may have wrote this document; correct?

MS. McDOLE: Written the document?

A. I --

MS. McDOLE: Objection to the form of the question.

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A. I -- my testimony is that I certainly wrote some portions of it, yes, sir.

THE REPORTER: Off the record, please.

(Discussion off the record.)

MR. O'FALLON: Dr. Simmons, I have no further questions at this time.

DIRECT EXAMINATION

BY MS. McDOLE:

Q. Good afternoon, Dr. Simmons. I'd like to ask you just a few questions.

You recall earlier in this deposition Mr. O'Fallon showed you a few documents written by Rodgman and Teague.

A. Yes, I recall that.

Q. And those documents related to certain surveys or studies or analyses that they had made?

MR. O'FALLON: Objection.

Q. Well could you tell us generally what those documents related to.

A. Okay. I'm looking at the documents that you just placed in my hands, and they are Exhibit 1049, 1050 and 1090.

Q. And those documents were written either by Dr. Rodgman or Dr. Teague?

MR. O'FALLON: Objection.

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A. Document 1049 was written by Dr. Rodgman. Doc -- document 1050 was written by Dr. Rodgman, and document 1090 was written by Dr. Claude Teague.

Q. And do you recall that Mr. O'Fallon asked you certain questions about those documents earlier today?

MR. O'FALLON: Objection, form.

A. I've -- I've -- I've been asked questions about the documents. I don't recall the questions, yes.

Q. Okay. Do you recall that Mr. O'Fallon directed your attention to selected portions of those exhibits?

MR. O'FALLON: Objection, form.

A. I recall that there were certain statements that were the focus of his questions, yes, ma'am.

Q. Right. And in those documents that we are referring to, are Dr. Teague and Dr. Rodgman focusing on research performed by R.J. Reynolds or studies conducted by others outside of Reynolds?

MR. O'FALLON: Objection, form.

A. They -- they don't state that this is research that has been done by Reynolds. It -- it appears that they are surveys or at least -- I'll take them one at a time.

Q. Okay. Let's talk about the Dr. Teague

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document. That -- that is which exhibit?

A. It is Exhibit 1090, and in his opening statement, object -- I presume he means the object of his -- of his inquiry -- general survey of cancer research, and he says he cites pertinent references, review articles and so forth, indicating that this is a review of -- of work that's been published by others in the scientific literature.

Q. And that is what this document, this exhibit, relates to generally?

MR. O'FALLON: Objection, form.

Q. That is, published literature?

MR. O'FALLON: Objection, form.

A. My conclusion would be that he has focused on -- on research that has been published in the -- in the peer review scientific literature by other people. That's my conclusion.

Q. Right. And available to the public; correct?

MR. O'FALLON: Objection, foundation.

A. The -- available -- available to those who read the scientific literature.

Q. Okay. In other words, Dr. Teague wasn't talking about some kind of secret studies performed by Reynolds, was he?

MR. O'FALLON: Objection, form.

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Source: https://www.industrydocuments.ucsf.edu/docs/lxhd0001

A. I see no indication of that at all, no.

Q. Okay. Turn, if you would, to the document -- the two documents authored by Dr. Rodgman. Let's talk first about the November 2nd, 1959 document.

A. That would be Exhibit 1049.

Q. And again what is Dr. Rodgman looking at in this document?

A. I'm not real sure. Let me look -- look at it just a second.

Q. Sure, take your time.

A. He has -- he has focused, all right, on a family of compounds referred to as polycyclic aromatic hydrocarbons. These -- a number of members of this particular family have been shown to be animal carcinogens in one form or another, and he is reviewing what is known about that and -- about that subject and referring to efforts that should be made by Reynolds to reduce the appearance of these compounds in our -- in our -- the smoke of our cigarettes.

Q. Right. And is he referring to published findings and published reports relating to the polycyclic hydrocarbons?

MR. O'FALLON: Objection, form.

A. That is my understanding from -- from reading.

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I have not talked to Dr. Rodgman about the document.
Q. Okay. Could you turn then to the second document authored by Dr. Rodgman that Mr. O'Fallon discussed with you earlier today.
A. This would be Exhibit 1050.
Q. Okay. What was Dr. Rodgman reviewing at that point in this document?
A. The title of the document is "THE SMOKING AND HEALTH PROBLEM -- A CRITICAL AND OBJECTIVE APPRAISAL."
Q. Okay. And does this document likewise refer to published data and published studies?
MR. O'FALLON: Objection, form.
Q. For example, Mr. O'Fallon referred to the evidence that Dr. Rodgman mentioned in this exhibit, "The Evidence - Pro and Con," for example, which appears on page two.
MR. O'FALLON: Objection.
A. The -- to the best of my ability, to understand the document -- once -- once again I have not talked to Dr. Rodgman about this, but he is reviewing data or studies that have been published in the peer review literature and trying to summarize that evidence here.
Q. And again, this is not some secret study that

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RJR has conducted on this subject; correct?

MR. O'FALLON: Objection, form.

A. I can't tell, but it -- it looks like there's -- there's no Reynolds work involved here at all. It's a review of the scientific literature.

MS. McDOLE: Okay. Thank you very much. I have nothing else.

THE REPORTER: Off the record, please.

(Discussion off the record.)

ADVERSE EXAMINATION

BY MR. O'FALLON:

Q. Dr. Simmons, in the redirect you were asked a couple questions about some research studies done at RJR by Dr. Teague and Dr. Rodgman; correct?

A. I was asked some questions about some memoranda that were written by -- by these gentlemen.

Q. It's my understanding of your testimony that you believe that these documents rely on publicly available information; is that true?

A. Information, I believe my testimony was, that would be available to people who read the scientific literature.

Q. Okay. You understand that some of these documents; in particular, Plaintiffs' Exhibit 1049, refers specifically to internal Reynolds research;

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correct?
A. I believe it refers to some analytical chemistry internal research.
Q. Right. Specifically if you look at the first page of the document, the fourth paragraph, Dr. Rodgman writes, quote, "As described in RDR, 1956, Number 9, we in the R. J. Reynolds Tobacco Company Research Department corroborated the published findings with respect to 3,4-benzpyrene," obtaining -- "obtained this compound in crystalline form, and positively identified it as a constituent of cigarette smoke on the basis of its chemical and physical properties"; correct?
A. That is correct, yes, sir.
Q. So they have confirmed internally that 3,4-benzpyrene, a known carcinogen, occurs in tobacco smoke; correct?
A. The -- they confirmed that benz -- benzopyrene was present in cigarette smoke, that's correct.
Q. Okay.
A. It had been published and -- and it was what they were attempting to do.
Q. But of course in the Frank Statement, the cigarette industry disputed whether 3,4-benzpyrene basically had been found in cigarette smoke;

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correct?
MS. McDOLE: Objection to the form of the question.
A. Can I see that? I don't recall that. I was thinking about other things in there.
The Frank Statement was issued in 1954. This memo is dated 1959, so there's a five-year advance over the Frank Statement.
Q. Okay. Go up to the first paragraph in Plaintiffs' Exhibit 1049, the 1959 memo. It states "In 1954 the first report of the presence of a carcinogenic," parenthetical, "(cancer-producing)," end parenthetical, "polycyclic hydrocarbon 3,4-benzpyrene in cigarette smoke was published"; correct?
A. It was reported, yes, that's correct.
Q. Okay. And the Frank Statement is published in 1954 and specifically refers to "RECENT REPORTS on experiments with mice have given wide publicity to a theory that cigarette smoking is in some way linked with lung cancer in humans"; correct?
A. That's the opening paragraph, yes, sir.
Q. Right. And in part one of the reports they're referring to is Wynder's report indicating that he had discovered 3,4-benzpyrene in cigarette smoke;

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correct?
A. Well let's --
MS. McDOLE: Objection to the form of the question.
A. Let's see. I'm not sure. Show me where that is. You've -- you've --
Q. It's not stated in there. I'm asking you from your memory.
A. Oh. I'm sorry, if it -- I don't recall that.
Q. It's not your understanding that it was the medical report by Wynder that kind of started this whole issue?
A. I'm familiar with a lot of Dr. Wynder's work. His -- his first publication that I -- I recall was his epidemiology study in 1950, and then of course he went on to -- to look at the -- at skin painting studies in -- in laboratory rodents, and so I'm familiar with that work. I'm not aware that he was the first to report benzopyrene in cigarette smoke. He may have been. He has a colleague that is a very fine chemist, Dr. Dietrich Hoffmann, and so Dr. Wynder and Dr. Hoffmann coauthored a number of papers. And -- and Dr. Hoffmann, who is a chemist, may have reported benzopyrene, but I -- Mr. O'Fallon, I don't recall.

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Q. Okay. Let's go back to that last paragraph on the first page of 1049. After the part that we've read, Dr. Rodgman states, quote, "Some thirty-odd polycyclic hydrocarbons have since been similarly characterized in these laboratories"; correct?

A. That is -- that is a statement, yes, sir.

Q. Okay. And that's referring to the R.J. Reynolds laboratories, is it not?

A. I -- that's not an unreasonable assumption. That could be what he's saying.

Q. Okay. He then goes on to say one of the -- "Of these, eight are carcinogenic to mouse epidermis"; correct?

A. That is correct.

Q. He says "Cholanthrene, a potent carcinogen, is one of three not yet reported by other investigators"; correct?

A. That is a statement he has.

Q. So it appears that this evidence that Cholanthrene is in cigarette smoke is unique to R.J. Reynolds; correct?

MS. McDOLE: Objection to the form of the question.

A. If you -- if you look at the statement, he says "not yet reported by other investigators." I don't

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know whether other investigators were aware of it at that time or not. The analytical division was in contact with a lot of other people around the country and other laboratories. For instance, even Dr. Wynder's laboratory and Dr. Hoffmann may have found it. I don't know. But what he's saying is it has not appeared in the scientific literature yet apparently.

Q. Okay. So in fact, it appears that much of the memo that Dr. Rodgman has written in 1959 actually involves internal R.J. Reynolds research; correct?

MS. McDOLE: Objection to the form.

A. Well it involves some chemical research, but not biological research.

Q. Because R.J. Reynolds didn't do biological research till the late '60s; correct?

A. I'm not sure exactly when they started.

Q. And then they abruptly halted it in 1970; correct?

MS. McDOLE: Objection to the word "abruptly."

A. It ceased to -- to function in 1970, yes, sir.

MR. O'FALLON: I have no further questions.

THE REPORTER: Off the record, please.

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(Deposition recessed at 1:50 o'clock p.m.)

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C E R T I F I C A T E

I, William C. LaBorde, hereby certify that I am qualified as a verbatim shorthand reporter; that I took in stenographic shorthand the testimony of WILLIAM S. SIMMONS at the time and place aforesaid; and that the foregoing transcript consisting of pages 90 through 204, Volume II, is a true and correct, full and complete transcription of said shorthand notes, to the best of my ability.

Dated at Charlotte, North Carolina, this 21st day of August 1997.

WILLIAM C. LaBORDE
Registered Professional Reporter
Notary Public

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C E R T I F I C A T E

I, WILLIAM S. SIMMONS, the deponent, hereby certify that I have read the foregoing transcript consisting of pages 90 through 204, Volume II, and that said transcript is a true and correct, full and complete transcription of my deposition, except per the attached corrections, if any.

(Please check one.)

____ Yes, changes were made per the attached (no.) ____ pages.

____ No changes were made.

WILLIAM S. SIMMONS
Deponent

Sworn and subscribed to before me this day of 199__.

Notary Public

My commission expires: (WCL)

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